

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 334

(By Senator Ferns)

[Originating in the Committee on Health and Human
Resources;
reported February 18, 2015.]

A BILL to amend and reenact §30-3-13 of the Code of West
Virginia, 1931, as amended; to amend said code by
adding thereto a new section, designated §30-3-13a;
to amend said code by adding thereto a new section,
designated §30-7-21; and to amend said code by
adding thereto a new section, designated §30-14-16,
all relating generally to practice of medicine,
osteopathy and advance practice registered nursing;

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rewriting licensing requirements for practice of medicine and surgery or podiatry; making exceptions; providing for unauthorized practice; requiring notice; establishing criminal penalties; permitting practice of telemedicine; establishing requirements; making exceptions; defining terms; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That §30-3-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-3-13a; that said code be amended by adding thereto a new section, designated §30-7-21; and that said code be amended by adding thereto a new section, designated §30-14-16, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE

ACT.

**§30-3-13. Licensing requirements for the practice of
medicine and surgery or podiatry; exceptions;
unauthorized practice; notice; criminal penalties.**

1 (a) It is unlawful for any person who does not hold an
2 active, unexpired license issued pursuant to this article, or
3 who is not practicing pursuant to the licensure exceptions set
4 forth in this section, to:

5 (1) Engage in the practice of medicine and surgery or
6 podiatry in this state;

7 (2) Represent that he or she is a physician, surgeon or
8 podiatrist authorized to practice medicine and surgery or
9 podiatry in this state; or

10 (3) Use any title, word or abbreviation to indicate to
11 or induce others to believe that he or she is licensed to
12 practice medicine and surgery or podiatry in this state.

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1 (b) It is not unlawful for a person:

2 (1) Who is a licensed health care provider under this
3 code to act within his or her scope of practice;

4 (2) Who is not a licensed health care professional in
5 this state to provide first aid care in an emergency situation;

6 or

7 (3) To engage in the bona fide religious tenets of any
8 recognized church in the administration of assistance to the
9 sick or suffering by mental or spiritual means.

10 (c) The following persons are exempt from the
11 licensure requirements under this article:

12 (1) A person enrolled in a school of medicine
13 approved by the Liaison Committee on Medical Education or
14 by the board;

15 (2) A person enrolled in a school of podiatric
16 medicine approved by the Council of Podiatry Education or

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1 by the board;

2 (3) A person engaged in graduate medical training in
3 a program approved by the Accreditation Council for
4 Graduate Medical Education or the board;

5 (4) A person engaged in graduate podiatric training in
6 a program approved by the Council on Podiatric Education or
7 by the board;

8 (5) A physician or podiatrist engaged in the
9 performance of his or her official duties holding one or more
10 licenses from another state or foreign country and who is a
11 commissioned medical officer of, a member of or employed
12 by:

13 (A) The United States Military;

14 (B) The Department of Defense;

15 (C) The United States Public Health Service;

16 (D) The Department of Council on Podiatric

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1 Education; or

2 (E) Any other federal agency;

3 (6) A physician or podiatrist holding one or more
4 unrestricted licenses granted by another state or foreign
5 country serving as visiting medical faculty engaged in
6 teaching or research duties at a medical school or institution
7 recognized by the board for up to six months if:

8 (A) The physician does not engage in the practice of
9 medicine and surgery or podiatry outside of the auspices of
10 the sponsoring school or institution; and

11 (B) The sponsoring medical school or institution
12 provides prior written notification to the board including the
13 physician's name, all jurisdictions of licensure and the
14 beginning and end date of the physician's visiting medical
15 faculty status.

16 (7) A physician or podiatrist holding one or more

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1 unrestricted licenses granted by another state present in the
2 state as a member of an air ambulance treatment team or
3 organ harvesting team;

4 (8) A physician or podiatrist holding one or more
5 unrestricted licenses granted by another state or foreign
6 country providing a consultation on a singular occasion to a
7 licensed physician or podiatrist in this state, whether the
8 consulting physician or podiatrists is physically present in the
9 state for the consultation or not;

10 (9) A physician or podiatrist holding one or more
11 unrestricted licenses granted by another state or foreign
12 country providing teaching assistance, in a medical capacity,
13 for a period not to exceed seven days;

14 (10) A physician or podiatrist holding one or more
15 unrestricted licenses granted by another state or foreign
16 country serving as a volunteer in a noncompensated role for

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1 a charitable function for a period not to exceed seven days;
2 and

3 (11) A physician or podiatrist holding one or more
4 unrestricted licenses granted by another state or foreign
5 country providing medical services to a college or university
6 affiliated and/or sponsored sports team or an incorporated
7 sports team if:

8 (A) He or she has a written agreement with that sports
9 team to provide care to team members, coaching staff and
10 families traveling with the team for a specific sporting event,
11 team appearance or training camp occurring in this state;

12 (B) He or she may only provide care or consultation
13 to team members, coaching staff and families traveling with
14 the team no longer than seven consecutive days per sporting
15 event;

16 (C) He or she is not authorized to practice at a health

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1 care facility or clinic, acute care facility or urgent care center
2 located in this state; but the physician may accompany the
3 patient to the facility and consult; and

4 (D) The physician or podiatrist may be permitted, by
5 written permission from the executive director, to extend his
6 or her authorization to practice medicine for a maximum of
7 seven additional consecutive days if the requestor shows good
8 cause for the extension.

9 (d) A physician or podiatrist who does not hold a
10 license issued by the board and who is practicing medicine in
11 this state pursuant to the exceptions to licensure set forth in
12 this section may practice in West Virginia under one or more
13 of the licensure exceptions for no greater than a cumulative
14 total of thirty days in any one calendar year.

15 (e) The executive director shall send by certified mail
16 to a physician not licensed in this state a written order that

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1 revokes the privilege to practice medicine under this section
2 if the executive director finds good cause to do so. If no
3 current address can be determined, the order may be sent by
4 regular mail to the physician's last-known address.

5 (f) A person who engages in unlawful practice of
6 medicine and surgery or podiatry while holding a license
7 issued pursuant to this article which has been classified by the
8 board as expired for ninety days or fewer is guilty of a
9 misdemeanor and, upon conviction, shall be fined not more
10 than \$5,000 or confined in jail not more than twelve months,
11 or both fined and confined.

12 (g) A person who: (1) Has never been licensed by the
13 board under this article; (2) holds a license which has been
14 classified by the board as expired for greater than ninety days;
15 or (3) holds a license which has been placed in inactive status,
16 revoked, suspended or surrendered to the board is guilty of a

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1 felony and, upon conviction, shall be fined not more than
2 \$10,000 or imprisoned in a correctional facility, or both fined
3 and imprisoned.

4 **§30-3-13a. Telemedicine practice; requirements;**
5 **exceptions; definitions; rulemaking.**

6 (a) *Definitions.* – For the purposes of this section:

7 “Store and forward telemedicine” means the
8 asynchronous computer based communication of medical
9 data and/or images between a patient and a physician or
10 podiatrist at another site for the purpose of diagnostic and/or
11 therapeutic assistance.

12 “Telemedicine” means the practice of medicine using
13 tools such as electronic communication, information
14 technology or other means of interaction between a licensed
15 health care professional in one location and a patient in
16 another location, with or without an intervening health care

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1 provider. The utilization of electronic communication in on
2 call, cross coverage and emergency services situations is not
3 telemedicine.

4 “Telemedicine technologies” means technologies and
5 devices enabling secure electronic communications and
6 information exchange in the practice of telemedicine and
7 typically involve the application of secure real time video
8 conferencing or similar secure video services, remote
9 monitoring, interactive video and store and forward digital
10 image or health data technology to provide or support health
11 care delivery by replicating the interaction of a traditional in
12 person encounter between a provider and a patient.

13 (b) The practice of medicine or surgery or podiatry
14 occurs where the patient is located at the time telemedicine
15 technologies are used. A physician, podiatrist or physician
16 assistant who engages in the practice of medicine through

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1 telemedicine technologies with respect to patients located in
2 this state shall be licensed by the board.

3 (c) A physician, podiatrist or physician assistant using
4 telemedicine technologies to practice medicine or surgery or
5 podiatry to a patient shall:

6 (1) Verify the identity and location of the patient;

7 (2) Provide the patient with confirmation of the
8 identity, location and qualifications of the physician,
9 podiatrist or physician assistant;

10 (3) Establish and/or maintain a physician, podiatrist or
11 physician assistant patient relationship which conforms to the
12 standard of care;

13 (4) Determine whether telemedicine technologies are
14 appropriate for the particular patient presentation for which
15 the practice medicine or surgery or podiatry are to be
16 rendered;

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1 (5) Obtain from the patient informed consent for the
2 use of telemedicine technologies in the practice medicine or
3 surgery or podiatry to the patient;

4 (6) Conduct all appropriate evaluations and history of
5 the patient consistent with traditional standards of care for the
6 particular patient presentation; and

7 (7) Create and maintain healthcare records for the
8 patient which justify the course of treatment and which verify
9 compliance with the requirements of this section.

10 (d) The requirements of subdivisions (2) and (5),
11 subsection (c) of this section do not apply the practice of
12 pathology and radiology medicine through store and forward
13 telemedicine.

14 (e) Where an existing physician, podiatrist or
15 physician assistant patient relationship is not present prior to
16 the utilization to telemedicine technologies, or when services

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1 are rendered solely through telemedicine technologies, a
2 physician, podiatrist or physician assistant patient relationship
3 may only be established through the use of telemedicine
4 technologies which incorporate interactive audio using store
5 and forward technology, real time videoconferencing or
6 similar secure video services during the initial physician,
7 podiatrist or physician assistant patient encounter. However,
8 a physician patient relationship may be established through
9 store and forward telemedicine for the practice of pathology
10 and radiology. Once a physician, podiatrist or physician
11 assistant patient relationship has been established, the
12 physician, podiatrist or physician assistant, with the informed
13 consent of the patient, may utilize any telemedicine
14 technology which meets the standard of care and is
15 appropriate for the particular patient presentation.

16 (f) The practice of medicine and surgery or podiatry

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1 provided via telemedicine technologies, including the
2 establishment of a physician, podiatrist or physician assistant
3 patient relationship and issuing a prescription via electronic
4 means as part of a telemedicine encounter, are subject to the
5 same standard of care, professional practice requirements and
6 scope of practice limitations as traditional in person
7 physician, podiatrist or physician assistant patient encounters.
8 Treatment, including issuing a prescription, based solely on
9 an online questionnaire does not constitute an acceptable
10 standard of care.

11 (g) The utilization of telemedicine technologies to
12 practice medicine and surgery or podiatry on a patient for
13 whom the standard of care requires an in-person, physical
14 examination shall constitute dishonorable, unethical and
15 unprofessional conduct.

16 (h) The patient record established during the use of

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1 telemedicine technologies shall be accessible and documented
2 for both the physician, podiatrist, physician assistant and the
3 patient, consistent with the laws and legislative rules
4 governing patient health care records and shall include a copy
5 of the informed consent to the practice of medicine and
6 surgery or podiatry via telemedicine technologies. All laws
7 governing the confidentiality of health care information and
8 governing patient access to medical records shall apply to
9 records of practice of medicine and surgery or podiatry
10 provided through telemedicine technologies. A physician,
11 podiatrist or physician assistant solely providing services
12 using telemedicine technologies shall make documentation of
13 the encounter easily available to the patient and subject to the
14 patient's consent, any identified care provider of the patient
15 immediately after the encounter.

16 (i) A physician, podiatrist or physician assistant whose

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1 has a physician, podiatrist or physician assistant patient
2 relationship and who practices medicine and surgery or
3 podiatry to a patient solely through the utilization of
4 telemedicine technologies may not prescribe any controlled
5 substances listed in Schedule I or II of the Uniform
6 Controlled Substances Act.

7 (j) The board may propose rules for legislative
8 approval in accordance with article three, chapter twenty-
9 nine-a of this code to implement standards for and limitations
10 upon the utilization of telemedicine technologies in the
11 practice of medicine and podiatry in this state.

12 (k) Nothing in this section changes the rights, duties,
13 privileges, responsibilities and liabilities incident to the
14 physician, podiatrist or physician assistant patient
15 relationship, nor is it meant or intended to change in any way
16 the personal character of the physician, podiatrist or physician

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1 assistant patient relationship. This section does not alter the
2 scope of practice of any health care provider or authorize the
3 delivery of health care services in a setting, or in a manner,
4 not otherwise authorized by law.

5 **§30-7-21. Telehealth practice; requirements; exceptions;**
6 **definitions; rulemaking.**

7 (a) *Definitions.* – For the purposes of this section:

8 “Telehealth” means the practice of advanced practice
9 nursing using tools such as electronic communication,
10 information technology or other means of interaction between
11 a licensed health care professional in one location and a
12 patient in another location, with or without an intervening
13 health care provider.

14 “Telehealth technologies” means technologies and
15 devices enabling secure electronic communications and
16 information exchange in the practice of telehealth and

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1 typically involve the application of secure real time video
2 conferencing or similar secure video services, remote
3 monitoring, interactive audio and store and forward digital
4 image or health data technology to provide or support health
5 care delivery by replicating the interaction of a traditional in
6 person encounter between a provider and a patient.

7 (b) The practice of advanced practice nursing occurs
8 where the patient is located at the time telehealth technologies
9 are used. An advanced practice registered nurse who engages
10 in the practice of advanced practice registered nursing
11 through telehealth technologies with respect to patients
12 located in this state shall be licensed by the board.

13 (c) An advanced practice registered nurse using
14 telehealth technologies to practice advanced practice nursing
15 to a patient shall:

16 (1) Verify the identity and location of the patient;

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1 (2) Provide the patient with confirmation of the
2 identity, location and qualifications of the advanced practice
3 registered nurse;

4 (3) Establish and/or maintain an advanced practice
5 registered nurse relationship which conforms to the standard
6 of care;

7 (4) Determine whether telehealth technologies are
8 appropriate for the particular patient presentation for which
9 the practice of advanced practice nursing are to be rendered;

10 (5) Obtain from the patient informed consent for the
11 use of telehealth technologies in the practice of advanced
12 practice nursing to the patient;

13 (6) Conduct all appropriate evaluations and history of
14 the patient consistent with traditional standards of care for the
15 particular patient presentation; and

16 (7) Create and maintain health care records for the

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1 patient which justify the course of treatment and which verify
2 compliance with the requirements of this section.

3 (d) Where an existing advanced practice registered
4 nurse patient relationship is not present prior to the utilization
5 to telehealth technologies, or when services are rendered
6 solely through telehealth technologies, an advanced practice
7 registered nurse relationship may only be established through
8 the use of telehealth technologies which incorporate
9 interactive audio using store and forward technology, real
10 time videoconferencing or similar secure video services
11 during the initial advanced practice registered nurse patient
12 encounter. Once an advanced practice registered nurse
13 patient relationship has been established, the advanced
14 practice registered nurse, with the informed consent of the
15 patient, may utilize any telehealth technology which meets
16 the standard of care and is appropriate for the particular

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1 patient presentation.

2 (e) The practice of advanced practice nursing
3 provided via telehealth technologies, including the
4 establishment of an advanced practice registered nurse
5 relationship and issuing a prescription via electronic means as
6 part of a telehealth encounter, are subject to the same
7 standard of care, professional practice requirements and scope
8 of practice limitations as traditional in person advanced
9 practice registered nurse patient encounters. Treatment,
10 including issuing a prescription, based solely on an online
11 questionnaire does not constitute an acceptable standard of
12 care.

13 (f) The utilization of telehealth technologies to
14 practice of advanced practice nursing on a patient for whom
15 the standard of care requires an in-person, physical
16 examination shall constitute unethical and unprofessional

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1 conduct.

2 (g) The patient record established during the use of
3 telehealth technologies shall be accessible and documented
4 for both the advanced practice registered nurse and the
5 patient, consistent with the laws and legislative rules
6 governing patient health care records and shall include a copy
7 of the informed consent to the practice of advanced practice
8 registered nurse via telehealth technologies. All laws
9 governing the confidentiality of health care information and
10 governing patient access to medical records shall apply to
11 records of the practice of advanced practice nursing provided
12 through telehealth technologies. An advanced practice
13 registered nurse solely providing services using telehealth
14 technologies shall make documentation of the encounter
15 easily available to the patient and, subject to the patient's
16 consent, any identified care provider of the patient

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1 immediately after the encounter.

2 (h) An advanced practice registered nurse who has an
3 advanced practice registered nurse patient relationship and
4 who practices advanced practice registered nursing to a
5 patient solely through the utilization of telehealth
6 technologies may not prescribe any controlled substances
7 listed in Schedule I or II of the Uniform Controlled
8 Substances Act.

9 (i) The board may propose rules for legislative
10 approval in accordance with article three, chapter twenty-
11 nine-a of this code to implement standards for and limitations
12 upon the utilization of telehealth technologies in the practice
13 of advanced practice nursing in this state.

14 (j) Nothing in this section changes the rights, duties,
15 privileges, responsibilities and liabilities incident to the
16 advanced practice registered nurse patient relationship, nor is

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1 it meant or intended to change in any way the personal
2 character of the advanced practice registered nurse patient
3 relationship. This section does not alter the scope of practice
4 of any health care provider or authorize the delivery of health
5 care services in a setting, or in a manner, not otherwise
6 authorized by law.

7 **§30-14-16. Telemedicine practice; requirements;**
8 **exceptions; definitions; rulemaking.**

9 (a) *Definitions.* – For the purposes of this section:

10 “Store and forward telemedicine” means the
11 asynchronous computer-based communication of medical
12 data and/or images between a patient and a osteopathic
13 physician at another site for the purpose of diagnostic and/or
14 therapeutic assistance.

15 “Telemedicine” means the practice of osteopathy
16 using tools such as electronic communication, information

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1 technology or other means of interaction between a licensed
2 health care professional in one location and a patient in
3 another location, with or without an intervening health care
4 provider. The utilization of electronic communication in on
5 call, cross coverage and emergency services situations, audio
6 only telephone conversation, email, instant message
7 conversation or fax is not telemedicine.

8 “Telemedicine technologies” means technologies and
9 devices enabling secure electronic communications and
10 information exchange in the practice of telemedicine and
11 typically involve the application of secure real time video
12 conferencing or similar secure video services, remote
13 monitoring, interactive audio and store and forward digital
14 image or health data technology to provide or support health
15 care delivery by replicating the interaction of a traditional in
16 person encounter between a provider and a patient.

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1 (b) The practice of osteopathy occurs where the
2 patient is located at the time telemedicine technologies are
3 used. A osteopathic physician or physician assistant who
4 engages in the practice of osteopathy through telemedicine
5 technologies with respect to patients located in this state shall
6 be licensed by the board.

7 (c) An osteopathic physician or physician assistant
8 using telemedicine technologies to practice osteopathy to a
9 patient shall:

10 (1) Verify the identity and location of the patient;

11 (2) Provide the patient with confirmation of the
12 identity, location and qualifications of the osteopathic
13 physician or physician assistant;

14 (3) Establish and/or maintain a osteopathic physician
15 or physician assistant patient relationship which conforms to
16 the standard of care;

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1 (4) Determine whether telemedicine technologies are
2 appropriate for the particular patient presentation for which
3 the practice of osteopathy are to be rendered;

4 (5) Obtain from the patient informed consent for the
5 use of telemedicine technologies in the practice of osteopathy
6 to the patient;

7 (6) Conduct all appropriate evaluations and history of
8 the patient consistent with traditional standards of care for the
9 particular patient presentation; and

10 (7) Create and maintain healthcare records for the
11 patient which justify the course of treatment and which verify
12 compliance with the requirements of this section.

13 (d) The requirements of subdivisions (2) and (5),
14 subsection (c) of this section do not apply the practice of
15 pathology and radiology medicine through store and forward
16 telemedicine.

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1 (e) Where an existing osteopathic physician or
2 physician assistant patient relationship is not present prior to
3 the utilization to telemedicine technologies, or when services
4 are rendered solely through telemedicine technologies, an
5 osteopathic physician or physician assistant patient
6 relationship may only be established through the use of
7 telemedicine technologies which incorporate interactive audio
8 using store and forward technology, real time
9 videoconferencing or similar secure video services during the
10 initial osteopathic physician or physician assistant patient
11 encounter. However, an osteopathic physician patient
12 relationship may be established through store and forward
13 telemedicine for the practice of pathology and radiology.
14 Once a osteopathic physician or physician assistant patient
15 relationship has been established, the osteopathic physician
16 or physician assistant, with the informed consent of the

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1 patient, may utilize any telemedicine technology which meets
2 the standard of care and is appropriate for the particular
3 patient presentation.

4 (f) The practice of osteopathy provided via
5 telemedicine technologies, including the establishment of an
6 osteopathic physician or physician assistant patient
7 relationship and issuing a prescription via electronic means as
8 part of a telemedicine encounter, are subject to the same
9 standard of care, professional practice requirements and scope
10 of practice limitations as traditional in-person osteopathic
11 physician or physician assistant patient encounters.
12 Treatment, including issuing a prescription, based solely on
13 an online questionnaire does not constitute an acceptable
14 standard of care.

15 (g) The utilization of telemedicine technologies to
16 practice osteopathy on a patient for whom the standard of

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1 care requires an in-person, physical examination or
2 osteopathic manipulation therapy shall constitute
3 dishonorable, unethical and unprofessional conduct.

4 (h) The patient record established during the use of
5 telemedicine technologies shall be accessible and documented
6 for both the osteopathic physician, physician assistant and the
7 patient, consistent with the laws and legislative rules
8 governing patient health care records and shall include a copy
9 of the informed consent to the practice of osteopathy via
10 telemedicine technologies. All laws governing the
11 confidentiality of health care information and governing
12 patient access to medical records shall apply to records of the
13 practice of osteopathy provided through telemedicine
14 technologies. An osteopathic physician or physician assistant
15 solely providing services using telemedicine technologies
16 shall make documentation of the encounter easily available to

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1 the patient and, subject to the patient's consent, any identified
2 care provider of the patient immediately after the encounter.

3 (i) An osteopathic physician or physician assistant
4 who has an osteopathic physician or physician assistant
5 patient relationship and who practices osteopathy to a patient
6 solely through the utilization of telemedicine technologies
7 may not prescribe any controlled substances listed in
8 Schedule I or II of the Uniform Controlled Substances Act.

9 (j) The board may propose rules for legislative
10 approval in accordance with article three, chapter twenty
11 nine-a of this code to implement standards for and limitations
12 upon the utilization of telemedicine technologies in the
13 practice of osteopathy in this state.

14 (k) Nothing in this section changes the rights, duties,
15 privileges, responsibilities and liabilities incident to the
16 osteopathic physician or physician assistant patient

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1 relationship, nor is it meant or intended to change in any way
2 the personal character of the osteopathic physician or
3 physician assistant patient relationship. This section does not
4 alter the scope of practice of any health care provider or
5 authorize the delivery of health care services in a setting, or
6 in a manner, not otherwise authorized by law.